Supreme Court, U.S.
FILED
APR 29 2002
CLERK

No. 01-1225

In The

Supreme Court of the United States

MEXICAN AMERICAN LEGISLATIVE CAUCUS – TEXAS HOUSE OF REPRESENTATIVES,

Appellant,

v.

STATE OF TEXAS, et al.,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas (Three Judge Court)

REPLY TO MOTION TO DISMISS OR AFFIRM

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April 2002

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ARGUMENT

The State of Texas attempts to camouflage the deficiencies in the District Court judgment by mischaracterizing Appellant's challenge. The State of Texas argues in its Motion to Dismiss or Affirm that Appellant has challenged the State's redistricting plan, the LRB plan, not the plan adopted by the District Court. A review of the Appellant's Jurisdictional Statement clearly shows that the Appellant has appealed the District Court's judgment adopting a plan which is derived largely from the unprecleared LRB plan.[1]

The State further argues that because the State's adopted plan, the LRB plan, failed to secure preclearance it simply was not in effect, and therefore, could not have been subject to Section 2 review by the District Court. (Motion to Dismiss, pp. 2-5). On the other hand, the State also argues that it was appropriate for the District Court to employ the LRB plan as the baseline for its own plan since, except for minor retrogression problems, it was precleared. (Motion to Dismiss, p. 7, n. 13). Because, the District Court incorporated significant portions of the State's LRB plan as its own, Section 2 review of the LRB plan was appropriate.

As a matter of law, a legislative plan that has not secured preclearance is not 'effective as law' and a court must not address the validity of such a plan unless or

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[1] In the plan adopted by the District Court four of 150 districts are substantially modified from the LRB plan. The remaining districts in the court's plan are derived from the LRB plan virtually without change.

until the plan receives the requisite preclearance. *Conner v. Waller,* 421 U.S. 656 (1975) (*per curiam).* However, if a court incorporates the unprecleared plan as its own, it must ensure compliance with the substantive constitutional and statutory standards to which state plans are subject. *Upham v. Seamon,* 456 U.S. 37, 42 (1982) (*per curiam*). Therefore, once the District Court determined to use significant portions of LRB plan as its own, it was obligated to ensure compliance with Section 2 of the Voting Rights Act. The District Court's determination of Appellant's Section 2 challenge is not an advisory opinion and Appellant's Section 2 appeal is appropriate.

With regard to Appellant's Section 5 issues, Appellant does not challenge the portion of the District Court's plan that partially addressed the objections of the Department of Justice. (Districts 74, 38 and Bexar County). In fact, as to that portion of the District Court's plan Appellant has prevailed. However, because the District Court: (1) wholly neglected to address other portions of the letter of objection such as District 35 and South Texas generally; and because (2) the District Court adopted the State's suggested remedy[2] for District 35, without preclearance, the judgment of the District Court should be reviewed by this Court.

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[2] The State's suggested remedy was included in its post trial brief.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction and set the case for argument.

Respectfully submitted,

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